

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY,
BOARD OF ALTERNATIVE HEALTH CARE, BOARD OF ARCHITECTS, BOARD
OF ATHLETICS, BOARD OF BARBERS AND COSMETOLOGISTS, BOARD OF
CHIROPRACTORS, BOARD OF CLINICAL LABORATORY SCIENCE
PRACTITIONERS, BOARD OF DENTISTRY, STATE ELECTRICAL BOARD,
BOARD OF FUNERAL SERVICE, BOARD OF HEARING AID DISPENSERS,
BOARD OF MEDICAL EXAMINERS, BOARD OF NURSING, BOARD OF NURSING
HOME ADMINISTRATORS, BOARD OF OCCUPATIONAL THERAPY PRACTICE,
BOARD OF OPTOMETRY, BOARD OF OUTFITTERS, BOARD OF PHARMACY,
BOARD OF PHYSICAL THERAPY EXAMINERS, BOARD OF PLUMBERS, BOARD
OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS, BOARD OF
PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS,
BOARD OF PSYCHOLOGISTS, BOARD OF PUBLIC ACCOUNTANTS, BOARD OF
RADIOLOGIC TECHNOLOGISTS, BOARD OF REAL ESTATE APPRAISERS,
BOARD OF REALTY REGULATION, BOARD OF RESPIRATORY CARE
PRACTITIONERS, BOARD OF SANITARIANS, BOARD OF SOCIAL WORK
EXAMINERS AND PROFESSIONAL COUNSELORS, BOARD OF SPEECH-
LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF VETERINARY
MEDICINE, BOILER OPERATING ENGINEERS PROGRAM, CONSTRUCTION
BLASTERS PROGRAM, CRANE AND HOISTING OPERATING ENGINEERS
PROGRAM, FIRE PREVENTION AND FIREWORKS WHOLESALERS PROGRAM,
AND LICENSED ADDICTION COUNSELORS PROGRAM
OF THE STATE OF MONTANA

In the matter of the transfer and amendment of) NOTICE OF TRANSFER
ARM 8.2.208, adoption of NEW RULES I through) AND AMENDMENT,
XIV, amendment of ARM 8.11.101, 8.11.114,) ADOPTION,
8.11.115, 8.11.118, 8.32.306, 8.32.402, 8.32.410,) AMENDMENT, AND
8.32.411, 8.32.425, 8.32.426, 8.32.1501, 8.32.1509,) REPEAL
8.32.1510, 24.111.401, 24.111.2101, 24.111.2102,)
24.111.2103, 24.111.2301, 24.114.401, 24.114.406,)
24.114.2101, 24.117.402, 24.117.406, 24.121.401,)
24.121.603, 24.121.2101, 24.122.401, 24.122.515,)
24.126.401, 24.126.2101, 24.129.401, 24.129.602,)
24.129.610, 24.131.405, 24.131.501, 24.135.402,)
24.135.2101, 24.138.301, 24.138.402, 24.138.517,)
24.138.518, 24.138.530, 24.141.405, 24.141.2101,)
24.141.2102, 24.144.404, 24.144.502, 24.144.2102,)
24.147.401, 24.147.505, 24.147.1313, 24.150.301,)
24.150.401, 24.150.505, 24.150.2101, 24.150.2201,)
24.156.601, 24.156.615, 24.156.617, 24.156.805,)
24.156.808, 24.156.1002, 24.156.1004, 24.156.1302,)
24.156.1305, 24.156.1402, 24.156.1411,)
24.156.1605, 24.156.2717, 24.156.2719,)
24.156.2731, 24.162.420, 24.162.2101, 24.165.401,)
24.165.407, 24.168.401, 24.168.2101, 24.171.401,)
24.171.2101, 24.174.401, 24.174.1402, 24.174.2103,)

24.174.2107, 24.177.401, 24.177.410, 24.177.504,)
24.177.2101, 24.180.401, 24.180.410, 24.180.607,)
24.180.707, 24.180.2101, 24.182.401, 24.182.511,)
24.182.513, 24.183.404, 24.183.2101, 24.183.2103,)
24.189.401, 24.189.407, 24.189.2107, 24.201.410,)
24.201.2101, 24.204.401, 24.204.404, 24.204.2102,)
24.207.401, 24.207.517, 24.207.520, 24.207.2101,)
24.210.401, 24.210.635, 24.210.661, 24.210.667,)
24.210.801, 24.210.825, 24.210.835, 24.210.836,)
24.210.1020, 24.213.401, 24.213.403, 24.213.412,)
24.213.2121, 24.216.402, 24.216.2101, 24.219.401,)
24.219.405, 24.219.615, 24.222.401, 24.222.2102,)
24.225.401, 24.225.510, 24.225.511, 24.225.550,)
24.225.709, 24.225.750, and 24.225.925, and)
repeal of 24.121.609, 24.156.602, 24.183.2104,)
and 24.225.515)

TO: All Concerned Persons

1. On February 23, 2006, the Department of Labor and Industry (department) and the above-stated boards (board) published MAR Notice No. 24-101-202 regarding the public hearing on the proposed transfer and amendment, adoption, amendment, and repeal of the above-stated rules, at page 383 of the 2006 Montana Administrative Register, issue no. 4.

2. On March 20, 2006, a public hearing was held on the proposed transfer and amendment, adoption, amendment, and repeal of the above-stated rules in Helena. In addition to department staff, two individuals appeared at the hearing. One individual presented testimony. Several written comments were received by the March 28, 2006 deadline.

3. Comments and testimony received pertained to the department rules only. No board rules received comments or testimony. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Three comments regarding New Rule III(1)(b) license lists or rosters were received. The commenters opposed the \$50 fee for license lists or rosters, stating this increase ranged from 166% to 20,000%. Commenters would like to see a lower price for lists that are e-mailed since this is a faster, simpler process. Comments also request an across the board fee, that is lower than the regular fee, when lists can be e-mailed to the requestors.

The commenters support efforts to streamline the process and make rules that are easier for everyone to understand but cannot support astronomical cost increases.

RESPONSE 1: The department appreciates the comments and regrets that in the

information supplied to the commenter, the fees for the Board of Realty Regulation were inadvertently listed in the wrong columns. The Board of Realty Regulation charges \$.25 for photocopies and \$20 for lists and rosters for 1 - 700 names, \$.03 per name for 701 names and over, or \$125 for all licensees, not \$.25 for lists and rosters and \$20 for photocopies. Therefore, the percentage range for the proposed \$50 fee for lists and rosters would be 166% to 1000%. The department apologizes for this error.

The department has reexamined the methodology used to determine the proposed fee of \$50 for lists and rosters and has determined this fee should be reduced to \$20. This reduced fee would also be appropriate for any list or roster supplied through electronic mail.

COMMENT 2: One commenter stated streamlining of administrative matters makes sense, given the variety and scope of the various boards within the Department of Labor and Industry. If uniformity and standardization have any positive effect on the cost of license renewal and since licenses will be issued continually throughout the year, penalty fees cannot be justified, as in the past, as necessary to offset the cost of additional staff time to 'break out' of their routine to issue a late license.

Absent the cost factor of issuing a license, justification settles on punitive action. Certainly, there is a remedial effect attached to punitive fees - to remind and urge the licensee to renew on time in the future.

The commenter suggests a tiered penalty fee schedule, applying a 50% late penalty fee for the 45-day lapse period and 100% penalty fee for the two-year expired period. A reduced penalty fee creates an incentive to renew within the 45 days. Full punitive charge should be applied for those who choose to renew after their license has expired.

RESPONSE 2: The department appreciates the comments. The incentive to avoiding punitive measures is completing the renewal process in a timely manner thereby eliminating the need to pay any late penalty fee.

A tiered penalty fee schedule has the potential to cause confusion among licensees and create additional work on department staff. If a tiered penalty fee schedule were used, a licensee would have three varying amounts that could be submitted in order to renew a license: renewal fee, 45-day lapse penalty fee, and two-year expired penalty fee. Most licensees are currently aware that they will pay the renewal fee or the renewal fee plus a late penalty fee. Introducing differing levels of penalty fees could make the renewal process more cumbersome. If a licensee is late renewing the license, they may now question is the 45 days calendar days or business days? Without knowing the provisions of Title 1, chapter 1, part 3, MCA, this could be confusing. The renewal dates are clearly stated and the licensee makes the choice of ensuring that the renewal is submitted on or prior to the renewal date. Additional staff time and resources could be required if a license renewal is late and the correct late penalty fee is not submitted. Also, if the license renewal process were not

completed during the 45-day lapse penalty fee period, the two-year expired penalty fee would now be required, adding additional delay and work needed to complete the renewal process. Staff members are not able to complete the renewal filing until the correct payment is received. Having multiple late penalty fees is a hardship on both the licensee and department staff and makes the use of a tiered penalty fee schedule impractical.

The department's online renewal system provides a fast and convenient method of renewing licenses. As the number of licensees who renew using the online renewal system increases, the number of late penalty fees charged should decrease. Online renewal is normally available 24 hours per day, seven days per week. This opportunity provides a handy way to avoid the common excuses for submitting renewals after the renewal date. While it is the licensee's responsibility to renew the license in a timely manner, the department will continue to make the license renewal process as easy as possible and encourage licensees to renew prior to the renewal date. The late penalty fee will be adopted as proposed.

COMMENT 3: A commenter affected by the proposed changes to ARM 8.2.208 (24.101.413) fully supports the changes as currently published.

RESPONSE 3: The department appreciates the comment.

COMMENT 4: A board member from a board overseeing a small number of licensees was concerned about retaining board authority over fees. The commenter is opposed to any changes that shift or decrease current fiscal authority and oversight from the board and is also opposed to any changes that make it even more difficult for small boards to exist due to financial concerns.

RESPONSE 4: The department appreciates the comment and understands the concerns of the board member. However, the rules of this board are not included in this notice because of the board's current situation and their fees will not change at this time.

COMMENT 5: A comment was received regarding changing the renewal time to one year for Licensed Addiction Counselors; and questioned what the requirements for continuing education units will be for one year and what the fee will be for renewal each year.

RESPONSE 5: The department appreciates the comment. ARM 8.2.208 (24.101.413), 8.11.115, and 8.11.118 as proposed to be amended do not impact the renewal frequency or date for Licensed Addiction Counselors who will continue to renew biennially on June 30. Therefore, the questions regarding annual continuing education units and renewal fees are outside the scope of this rulemaking.

COMMENT 6: Suggestions were received regarding the addition of several items to the definition rule.

RESPONSE 6: The department agrees that these additions further clarify the intent of the rules and has added the suggested language.

4. Numerous rules proposed in MAR Notice No. 24-101-202 have also had a concurrent amendment or adoption in other rulemaking notices. In order to aid the user and clearly identify how the amendments and adoptions impact each other, additional information is included as applicable in rules with concurrent rulemaking. In instances where a concurrent amendment is self-explanatory, no mention is made to the concurrent amendment.

5. On February 9, 2006, the department (Boiler Operating Engineers Program) published MAR Notice No. 24-122-01 regarding the public hearing on the proposed amendment of ARM 8.2.208 at page 300 of the 2006 Montana Administrative Register, issue no. 3 and amended ARM 8.2.208 as proposed at page 1277 of the 2006 Montana Administrative Register, issue no. 10. ARM 8.2.208(5)(e) and Table (f) are being shown to delete language that was added into (5)(e) and not removed in MAR Notice No. 24-101-202, and incorporate the changes adopted from MAR Notice No. 24-122-01 into the table format of the rule that is being amended in this rulemaking notice.

On November 23, 2005, the department published MAR Notice No. 24-142-1 regarding the public hearing on the proposed adoption of new rules regarding the elevator services occupational licensing program at page 2293 of the 2005 Montana Administrative Register, issue no. 22 and adopted these rules at page 553 of the 2006 Montana Administrative Register, issue no. 4. NEW RULE XVII (24.142.2101) regarding renewals was adopted as proposed. This renewal rule sets elevator program licensing renewal on a biennial cycle commencing on April 1, 2008. ARM 8.2.208(5)(l) is amended to conform to the adoption of this renewal rule.

The department has transferred and amended ARM 8.2.208 (24.101.413) with the following changes, stricken matter interlined, new matter underlined:

8.2.208 (24.101.413) RENEWAL DATES AND REQUIREMENTS

- (1) through (5) remain as proposed.
- (a) through (d) deleted as proposed.
- (e) ~~, and the boiler operator program~~
- (f) through (r) deleted as proposed.

Table (a) through (e) remain as proposed.

<u>(f)</u>	Boiler Operating Engineers	Agriculture Class Boiler Engineer	Annually	Anniversary Date of License <u>April 1</u>
		First Class Boiler Engineer	Annually	Anniversary Date of License <u>April 1</u>
		Low Pressure Boiler Engineer	Annually	Anniversary Date of License <u>April 1</u>

		Second Class Boiler Engineer	Annually	Anniversary Date of License <u>April 1</u>
		Third Class Boiler Engineer	Annually	Anniversary Date of License <u>April 1</u>
		Traction Boiler Engineer	Annually	Anniversary Date of License <u>April 1</u>

(g) through (k) remain as proposed.

(l)	Elevator Program	Contractor	Annually <u>Biennially</u>	April 1
		Inspector	Annually <u>Biennially</u>	April 1
		Mechanic	Annually <u>Biennially</u>	April 1

(m) through (7) remain as proposed.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

6. The department has adopted NEW RULE I (24.101.401), NEW RULE IV (24.101.407), NEW RULE V (24.101.414), and NEW RULE VI (24.101.408), exactly as proposed.

7. The department has adopted NEW RULE II (24.101.402) and NEW RULE III (24.101.403), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (24.101.402) DEFINITIONS As used in conjunction with Title 37, MCA, the following definitions apply:

(1) through (9) remain as proposed.

(10) "License history" means the progression of the license record from original licensure to the current status of the license provided to any requestor.

(11) "License verification" means the documentation provided to another licensing entity that may include information supplied for original licensure or the license history information.

(10) remains as proposed but is renumbered (12).

(11) (13) "Nonroutine application" means an application submitted to the division in which the application is defined as nonroutine either by the specific licensing entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern.

(a) A nonroutine application means that the applicant has one or more of the following:

(i) has pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;

(ii) is restricted by the terms and conditions of a final order in a disciplinary matter;

(iii) is required to submit materials that require professional evaluation by another licensee or licensing entity; or

(iv) has loss of documentation due to natural disaster or national emergency;

or

~~(iv)~~ (v) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:

(A) Board of Medical Examiners;

(B) Board of Professional Engineers and Professional Land Surveyors; or

(C) Board of Realty Regulation.

(14) "Original license" means the initial license issued to a licensee by the department after successfully fulfilling all licensure requirements for the first time.

(12) through (15) remain as proposed but are renumbered (15) through (18).

~~(16)~~ (19) "Routine application" means an application submitted to the division in which the application is defined as routine either by the specific licensing entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern.

(a) A routine application means that the applicant does not have one or more of the following:

(i) pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;

(ii) is not restricted by the terms and conditions of a final order in a disciplinary matter;

(iii) is not required to submit materials that require professional evaluation by another licensee or licensing entity; or

(iv) loss of documentation due to natural disaster or national emergency; or

~~(iv)~~ (v) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:

(A) Board of Medical Examiners;

(B) Board of Professional Engineers and Professional Land Surveyors; or

(C) Board of Realty Regulation.

(17) through (19) remain as proposed but are renumbered (20) through (22).

AUTH: 37-1-101, MCA

IMP: 37-1-130, 37-1-131, 37-1-141, MCA

NEW RULE III (24.101.403) FEES (1) Standardized fees, in addition to those fees charged by a specific licensing entity, are as follows:

(a) remains as proposed.

(b) licensee lists or rosters

50 20

(c) through (3) remain as proposed.

(4) When a military reservist renews a professional or occupational license after being discharged from active duty, the renewal fee will be the current renewal fee. No past fees accrued while the reservist was on active duty will be charged pursuant to 37-1-138, MCA.

(5) remains as proposed.

AUTH: 37-1-101, MCA

IMP: 27-1-717, 37-1-130, 37-1-134, 37-1-138, MCA

8. Each board or program that is promulgating rules implementing changes from HB 182 follow. Board rules appear first, by boards being listed in alphabetical order, followed by program rules, with programs being listed in alphabetical order. New, amended, and repealed rules are intermingled in this section instead of being lumped together by action type. This format is being used to keep all rule changes pertaining to a specific board or program together to aid licensees, the public, board members, and department staff.

Editorial note: The above paragraph 8. is included in the final notice. In order to better serve those on the interested persons list, only the information applicable to this interested persons list (i.e., specific Board or Program) is included in this notice. If you would to prefer the final notice in its entirety (which includes each Board's and Program's rules), please contact the specific Board or Program that sent you this abbreviated notice or see the Department's website at: <http://www.mt.gov/dli/bsd/license/rules.asp>.

BOARD OF NURSING

41. No comments or testimony were received.

42. The board has amended ARM 8.32.306, 8.32.402, 8.32.410, 8.32.411, 8.32.425, 8.32.426, 8.32.1501, 8.32.1509, and 8.32.1510 exactly as proposed.

BOARD OF NURSING
KAREN POLLINGTON, R.N., CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

107. These rules will be effective July 1, 2006.

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006